

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUGUST IMAGE, LLC,

Plaintiff,

-against-

THE BRAD LEBEAU COMPANY, INC.,

Defendant.

Case: 1:23-cv-4851-NRB

ANSWER

Defendant THE BRAD LEBEAU COMPANY, INC. (“Defendant”), by and through its attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, hereby answers and responds to the allegations in the First Amended Complaint (DE 28) (“Complaint”) of Plaintiff AUGUST IMAGE, LLC (“Plaintiff”) in the above action as follows:

ANSWERING “SUBSTANCE OF THE ACTION”

1. Defendant admits that the action is styled as one for copyright infringement as alleged in paragraph 1 of the Complaint, but denies that Defendant has infringed any copyright. Defendant further admits that Plaintiff purports to seek monetary relief under the Copyright Act as alleged in paragraph 1 of the Complaint, but Defendant denies that Plaintiff is entitled to any such relief. All allegations not expressly admitted are denied.

ANSWERING “PARTIES”

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, and on that basis denies the allegations contained therein.

3. With respect to the allegations contained in paragraph 3 of the Complaint, Defendant admits that it is a New York business corporation with a place of business at 101

Hamilton Place, New York, New York 10031. All allegations not expressly admitted are denied.

JURISDICTION AND VENUE

4. With respect to the allegations contained in paragraph 4 of the Complaint which sets forth conclusions of law, no response is required. To the extent a response is deemed required, Defendant admits that the cited federal statutes confer subject matter jurisdiction, and respectfully refers all questions of law to this Honorable Court. All allegations not expressly admitted are denied.

5. With respect to the allegations contained in paragraph 5 of the Complaint which set forth legal conclusions of law, no response is required, and Defendant refers all questions of law to this Honorable Court.

6. With respect to the allegations contained in paragraph 6 of the Complaint which set forth legal conclusions of law, no response is required, and respectfully refers all questions of law to this Honorable Court.

ANSWERING “FACTS COMMON TO ALL CLAIMS FOR RELIEF”

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and on that basis denies the allegations contained therein.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and on that basis denies the allegations contained therein.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and on that basis denies the allegations contained therein.

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and on that basis denies the allegations contained therein.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and on that basis denies the allegations contained therein.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and on that basis denies the allegations contained therein.

13. Defendant denies the allegations contained in paragraph 13 of the Complaint.

14. Defendant denies the allegations contained in paragraph 14 of the Complaint.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint.

16. Defendant denies the allegations contained in paragraph 16 of the Complaint.

17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, and on that basis denies the allegations contained therein.

22. Defendant denies the allegations contained in paragraph 22 of the Complaint.

ANSWERING “CLAIM FOR RELIEF – DIRECT COPYRIGHT INFRINGEMENT”

23. Responding to paragraph 23 of the Complaint, Defendant repeats and incorporates

the answers and allegations set forth at paragraphs 1 through 22 above as if fully set forth herein.

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint, and on that basis denies the allegations contained therein.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint, and on that basis denies the allegations contained therein.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. Defendant denies the allegations contained in paragraph 27 of the Complaint.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint.

ANSWERING “PRAYER FOR RELIEF”

The Prayer for Relief requires no response. To the extent any response is deemed required, Defendant denies that Plaintiff should be granted any of the relief requested in paragraphs 1 through 9.

ANSWERING “JURY DEMAND”

Defendant states that the Jury Demand does not require a response, and Defendant refers all questions of law to this Honorable Court.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendant asserts the following additional defenses to Plaintiff's claims. The assertion of such defenses, or the designation of a defense as an "affirmative defense," does not admit that Defendant has the burden of proving the matter asserted.

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE (Statute of Limitations)

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations because, upon information and belief, the allegedly infringing images were published more than three years prior to the filing of the Complaint and Plaintiff knew or should have known of the allegedly infringing use had it exercised ordinary diligence in policing its copyrights.

THIRD AFFIRMATIVE DEFENSE (Lack of Standing)

On information and belief, Plaintiff's claims are barred, in whole or in part, by its lack of standing to assert a claim for copyright infringement.

FOURTH AFFIRMATIVE DEFENSE (Lack of Registration)

On information and belief, Plaintiff's claims are barred, in whole or in part, by the lack of a valid copyright registration for the images or works at issue in this action.

FIFTH AFFIRMATIVE DEFENSE (Innocent Intent)

Defendant acted at all times with innocent intent, and if Plaintiff's rights have been violated as alleged in the Complaint, which allegations Defendant denies, such violation was entirely

innocent, and Defendant did not intentionally, knowingly, recklessly, maliciously or by gross or ordinary negligence participate in any such alleged violation of Plaintiff's rights.

**SIXTH AFFIRMATIVE DEFENSE
(No Statutory Damages or Attorney's Fees)**

On information and belief, Plaintiff failed to register the images or work alleged in the Complaint prior to the first date of Defendant's alleged infringement, and Plaintiff may therefore not recover statutory damages or attorney's fees for Defendant's alleged infringement of those works.

**SEVENTH AFFIRMATIVE DEFENSE
(Abandonment)**

Plaintiff's claims fail because Plaintiff has abandoned the copyright-in-suit by failing to enforce its copyrights against known infringement.

RESERVATION OF RIGHT TO AMEND

To the extent Defendant may have other separate and/or additional defenses of which it is not aware, Defendant reserves the right to assert them by amendment to this Answer as discovery continues.

WHEREFORE, Defendant respectfully requests that the Complaint asserted against it be dismissed in its entirety and all relief requested therein be denied, and that the Court award Defendant such further relief as the Court deems just and proper.

JURY DEMAND

Defendant demands a trial by jury of all causes of action as to which the law entitles it to a trial by jury.

Dated: October 18, 2023

Respectfully submitted,

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP

By: /s/ Stephen Barrett

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